coln (1881) 99 Ill. 578, but there is no clear authority for the statement of a text-writer that the heir is similarly limited. Bates, Partn. § 924. In *Valentine* v. *Wysor* (1889) 123 Ind. 47, the "heirs" were devisees and the will conferred power of sale, and in *Steinberg* v. *Larkin* (1897) 58 Kan. 201, the heirs were parties to the sale proceedings. The reasoning in the principal case was clearly anomalous. The argument was that the sale itself worked the conversion into personalty, so that when the administrator acquiesced, he was competent to represent the whole estate. If the sale worked the conversion, it does not appear how the administrator's acquiescence could affect the heir as of the time of the order of sale, when some of the property was still realty. The confusion in the law of partnership realty may well have contributed to the adoption in the proposed American Partnership Act, § 1 Reports, Amer. Bar Ass'n, 1906, Pt. 2, 440, of the mercantile view of the firm as a legal entity. Under this theory the heir has no rights and the widow, no dower. Act, § 22.

EQUITABLE JURISDICTION OF UNILATERAL ERROR OF LAW.—It has been stated that the jurisdiction of Chancery to relieve from error of law is "a recognized and highly beneficial branch of remedial justice." Story, Eq. Jur., 12th ed., Redfield's note, § 138a, *et seq.;* id. 13th ed., Bigelow's note, 112 *et seq.* That logically and as a matter of policy such relief should be granted, 7 COLUMBIA LAW REVIEW 279, is neither reason nor excuse for a misstatement of the present status of the law. Eight criteria of relief from unilateral error (to which this discussion is confined) have been advanced. The theory of Lord Westbury that *ignorantia juris non excusat* has reference only to general law as distinguished from private right and interest, *Cooper* v. *Phibbs* (1867) L. R. 2 Eng. & Ir. App. 149, apart from an obvious difficulty of application, is supported only by dicta. In a quite different sense, the suggestion has a proper use, special as distinguished from general legislative acts being without the operation of the maxim. *King* v. *Doolittle* (Tenn. 1858) 1 Head 77. Lord King's attempt to relegate the rule to criminal jurisprudence solely, *Lansdown* v. *Lansdown* (1730) Mos. 364; *Wyche* v. *Greene* (1854) 16 Ga. 49, 57, is likewise irreconcilable with authority. *Rankin* v. *Mortimer* (Pa. 1838) 7 Watts 372; *Goltra* v. *Sanasack* (1870) 53 Ill. 456. A mistake concerning an unquestioned, unequivocal legal rule has been held relievable; otherwise where the mistake concerns a doubtful or unsettled rule. Snell, Equity, 371. Whether true or not where compromises are concerned, *Naylor* v. *Winch* (1824) 1 Sim. & Stu. 555; cf. *Faust's Adm'x* v. *Birner* (1860) 30 Mo. 414, so far is this test from being universal that some jurisdictions hold exactly the reverse, giving relief "where the law is confessedly doubtful and * * * ignorance may well exist." *McKay* v. *Smith* (1902) 27 Wash. 442; Bispham, Eq., 5th ed., 275. Neither distinction seems theoretically intelligible or of practical expediency. *Good* v. *Herr* (Pa. 1844) 7 W. & S. 253. Where relief seems given for error of settled law, *Lansdown* v. *Lansdown, supra,* the error is not *per se* the foundation of jurisdiction but rather a medium to establish some other proper ground of relief. *Hunt* v. *Rousmanier's Admin'rs* (1828) 1 Pet. 1, 15, 16. Adopting a dictum that "ignorance is not mistake," *Fletcher* v

Tollet (1799) 5 Ves. 14, a few Southern jurisdictions maintain that confusion has arisen from failure to differentiate the former which is passive and incapable of proof, hence never relievable, from the latter. *Lawrence* v. *Beaubien* (S. C. 1831) 2 Bailey 623; *Culbreath* v. *Culbreath* (1849) 7 Ga. 64; *State* v. *Paup* (1852) 13 Ark.* 129. The overwhelming weight of authority, indicating that "this savours of hair-splitting," *Griffith* v. *Sebastian County* (1886) 49 Ark. 24, and that the result of the two is identical, Bouvier, Law Dict., tit. Ignorance, rejects the distinction. *Schlesinger* v. *U. S.* (1863) 1 Ct. of Cl. 16; *Gwynn* v. *Hamilton's Adm'r.* (1856) 29 Ala. 233. In accordance with an equitable tendency, error of law, admittedly not a ground for affirmative relief, has been held a good defense. *Sullivan* v. *Jennings* (1888) 44 N. J. Eq. 11. Obviously, the mistake when combined with other elements which practically invariably appear, *infra,* where relief is granted, is more effective from the negative than from the affirmative aspect. But to assert a general rule as stated would be not only to ignore authority but to overlook the true, if not always the confessed *ratio decidendi.* See *Peters* v. *Florence* (1861) 38 Pa. St. 194. Arguing that a person may err as to his own antecedent legal rights which are to be affected, although he fully understands the effect of the transaction itself, or may be correct as to his existing rights and in error with respect to legal effect, it has been ingeniously suggested that error of law of the first type—"analogous to, if not identical with, a mistake of fact"—is relievable; while error of the second type is not. Pomeroy, Eq. Jur., § 849. In deciding "hard" cases, some jurisdictions have willingly fallen into this mistake. *Toland* v. *Corey* (1890) 6 Utah 392; *Alabama etc. Ry. Co.* v. *Jones* (1895) 73 Miss. 110; cf. *Gross* v. *Leber* (1864) 47 Pa. St. 520. However, the principle of *ignorantia juris non excusat* was unquestionably derived from the civil law, 1 Spence, Eq. Jur. 632, in which the typical case of unrelievable error of law undeniably falls within the first class. Dig., XXII, tit. VI, 1, 9. Logically, also, the maxim not merely charges the individual with knowledge of effect, but also with knowledge of his legal rights. *Evans* v. *Hughes County* (1892) 3 S. D. 244; *Jordan* v. *Stevens* (1863) 51 Me. 78. Strong authority supports this position. *Weed* v. *Weed* (1883) 94 N. Y. 243; *Haviland* v. *Willets* (1894) 141 N. Y. 35; *Gwynn* v. *Hamilton's Adm'r., supra; Bintley* v. *Whittemore* (1867) 18 N. J. Eq. 366; *Peters* v. *Florence, supra; Norris* v. *Crowe* (1903) 206 Pa. St. 438; *Stafford* v. *Stafford* (1857) 1 De G. & J. 193, 202; *Zollman* v. *Moore* (Va. 1871) 21 Gratt. 313. If, on the other hand, the error is admitted, for argument's sake, as one of fact, the emptiness of the proposed criterion of unilateral error of law becomes manifest.

The reason for the failure of the tests thus far considered to explain the exercise of the relief oftentimes granted in cases of either type indicated, appears to lie in the assumption that for pure error of law of some sort or another, Equity will interfere. The decided weight of authority, however, demonstrates that astute as Chancery is to furnish a remedy where there is error of law, *Hemphill* v. *Moody* (1879) 64 Ala. 468, a mere naked error is not relievable; *Midland etc. Ry. Co.* v. *Johnson* (1858) 4 Jur. N. S. 643; but where relief is granted some other and special equity

is also present as a controlling factor. *Bank* v. *Daniel* (1838) 12 Pet. 32; *Hollingsworth* v. *Stone* (1883) 90 Ind. 244. Thus, any trace of constructive fraud, or of inequitable conduct, as where one party knew and took advantage of an error of law by the other which he did not correct, *Haviland* v. *Willets, supra,* will turn the scale. *A fortiori,* relief is justified by evidence of misrepresentation, *The Chestnut-Hill etc. Co.* v. *Chase* (1840) 14 Conn. 123; *Hardigree* v. *Mitchum* (1874) 51 Ala. 151, even though innocent, *Wilson* v. *Maryland etc. Co.* (1882) 60 Md. 150, undue influence, *Sands* v. *Sands* (1885) 112 Ill. 225, surprise, *Evans* v. *Llewellyn* (1787) 1 Cox Eq. Cas. 332, imbecility, *Nelson* v. *Betts* (1886) 21 Mo. App. 219, misplaced confidence, *Hall* v. *Otterson* (1894) 52 N. J. Eq. 522, deception, *Toland* v. *Corey, supra,* ignorance of the facts, *Lumber Exch. Bk.* v. *Miller* (N. Y. 1896) 18 Misc. 127, a fiduciary relation, *Ludington* v. *Paton* (1901) 111 Wis. 208, or gross disparity in position, *Alabama etc. Co.* v. *Jones, supra.* A few jurisdictions add the further qualification that if a decree would result in an unconscionable advantage, the hardship plus the error suffices. *Wilson* v. *Ott* (1896) 173 Pa. St. 261; *Griswold* v. *Hazard* (1890) 141 U. S. 260. Contra, *Champlin* v. *Layton* (N. Y. 1837) 18 Wend. 407; *Weed* v. *Weed, supra; Lancaster* v. *Flowers* (1904) 208 Pa. St. 199. The conclusion necessarily follows that the vast majority of decisions relied on to sustain the doctrine of remedy for unilateral error of law fall short of that position. Willard, Eq. Jur. (2d Ed.) 61. A recent Iowa decision is in full harmony with this theory. The plaintiff, though aware of the facts, was ignorant of the quantum of her interest, that is of her antecedent rights, the case falling accordingly within the first group above discussed, where relief for naked error of law is said to be allowed. It appeared, however, that although the defendant knew of the plaintiff's mistake, he made no endeavor to rectify it. Rescission of a conveyance was, therefore, properly granted. *Faxon* v. *Baldwin* (Ia. 1907) 114 N. W. 40. The error of law, combined with the constructive fraud of the defendant, made out a perfect case for equitable relief under the authorities.

PROPERTY *in Custodia Legis* UPON APPOINTMENT OF A RECEIVER.—When a court of equity administers the assets of a corporation through a receiver, such property is said to be within the custody of the law. The status of the property is changed: the incidents of corporate ownership cease, and a creditor's right to obtain a lien is suspended. *Cowan* v. *Plate Glass Co.* (1898) 184 Pa. 1. It is important to determine this point in the proceedings beyond which rights cannot be enlarged or modified. The question may be considered with reference to the right which is being exercised, e. g., the right to bring a similar suit in a court of concurrent jurisdiction; *May* v. *Printup* (1877) 59 Ga. 128; or the right to make a levy upon execution. *Maynard* v. *Bond* (1878) 67 Mo. 315. When the jurisdiction of one court attaches to property, the exercise of which requires possession and control, no interference by another court is allowed. It might be conceived that the second court is powerless to acquire jurisdiction, because the property is *in custodia legis:* "When one [court] takes into its jurisdiction a specific thing, that *res* is as much withdrawn from the judicial power as though it had been carried